

LAURA E. DUFFY
 United States Attorney
 MICHAEL P. RUNNING, JR.
 Special Assistant U.S. Attorney
 California State Bar No. 146450
 United States Attorney's Office
 880 Front Street, Room 6293
 San Diego, California 92101-8893
 Telephone: (619) 557-5979
 Email: michael.p.running@usdoj.gov

Attorneys for Plaintiff
 United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

| | | |
|-----------------------------|---|----------------------------------|
| UNITED STATES OF AMERICA, |) | Case No. <u>'12CV0338 WQHBLM</u> |
| |) | |
| Plaintiff, |) | COMPLAINT FOR |
| |) | FORFEITURE |
| v. |) | |
| |) | |
| MISCELLANEOUS COMPONENTS |) | |
| OF INDOOR PLANT CULTIVATION |) | |
| EQUIPMENT, |) | |
| |) | |
| WHIRLWIND COTTON |) | |
| CANDY MACHINE, |) | |
| |) | |
| Defendants. |) | |

By way of complaint against the defendants, Miscellaneous Components of Indoor Plant Cultivation, to wit: 8 high voltage light hoods; 8 ballasts; 1 CO2 generator; 1 two stage water filter; and 1 charcoal canister filter, and one Whirlwind Cotton Candy Machine, (hereinafter "defendant properties") the United States of America alleges:

1. This Court has jurisdiction over this action by virtue of the provisions of Title 28, United States Code, Section 1355, and Title 21, United States Code, Section 881.

2. Venue is proper in this district pursuant to Title 28, United States Code, Section 1395, because the defendant properties were found within this district.

3. On September 13, 2011, a California Highway Patrol officer responded to a residence on Dos Picos Park Road in Ramona, California in response to a call about a stolen mobile light stand generator. The officer found the generator on the property next to the barn and called the San Diego

1 County Sheriff's Department for assistance. A deputy sheriff arrived to assist and noticed the strong
2 odor of marijuana coming from the barn. The deputy also noticed an under ground water line leading
3 into the barn, that the barn windows had insulation covering them, and that the door to the barn had a
4 combination lock on it and a security alarm system.

5 4. The deputy contacted the resident of the property, Benjie Wyatt, and asked him what was
6 in the barn. Wyatt said that he had a marijuana grow in the barn.

7 5. San Diego County Integrated Narcotic Task Force (NTF) Officers came to the location
8 and contacted Wyatt. Wyatt gave them consent to search the barn and property, unlocked the barn,
9 and described how to disarm the alarm.

10 6. Inside the barn on the left side in the first horse stall were five empty grow trays: two four
11 foot by four foot trays; one four foot by eight foot tray; and two four foot by twelve foot trays. On the
12 right side of the barn in the second horse stall were several stacks of two stage blue and black colored
13 five gallon grow buckets. This stall also contained a large bag of grow rock and a multi flow
14 hydroponic system.

15 7. The rear center of the room contained a wooden floor with a house type door in the
16 center. The left side of the door contained a shelf with different types of nutrients. On the wall to the
17 left of the door was an exhaust filter built into the wall and to the left of the exhaust filter was a white
18 colored fifty five gallon reservoir. To the left of the reservoir was a wall divider. On the other side of
19 the wall divider was were two additional white colored fifty five gallon reservoirs and a two stage water
20 filter system. To the left of the filter system was an air conditioning unit. On the side wall facing the
21 two reservoirs was an electrical sub panel unit with exposed electrical wires leading to the next room
22 where the air conditioning unit was attached.

23 8. In the rear center room of the rear barn area was a hand written note on the wall with the
24 following writing "11b = 454 g 16oz 1/4 lb = 114g 1oz = 28.5 g TRIM RATES .43 Per Gram \$12.00
25 per oz \$200.00 per 1b".

26 9. To the right of the center room was a refrigerator containing numerous empty glass
27 mason jars, a digital scale, and a notebook containing several medical marijuana recommendations in
28 different names.

1 10. The back room of the barn contained a large cotton candy bowl on a Whirlwind cotton
2 candy machine. The bowl contained a brownish colored residue that tested positive for the presence of
3 marijuana. On the ground next to the cotton candy machine was a box containing approximately thirty
4 containers of cotton candy mixed with marijuana in various colors and flavors. The room also contained
5 an exhaust fan attached to the wall, several air coolers, tomato type cages, house hold type fans,
6 and ducting type equipment.

7 11. The two rooms located to the left rear of the barn contained growing marijuana. The first
8 room contained approximately 35 marijuana plants ranging in height from two feet to four feet and
9 appeared to be a cloning room as the larger plants were missing some branches. The marijuana plants
10 were illuminated by four, four by four florescent type grow lights. The room was being cooled by a
11 household type fan and an air conditioner unit. The room also contained a small fold up table that
12 contained several empty starter cloning type grow trays. On the wall was a list of directions for the clone
13 mix and how to transfer the clones from the cloning tray into pots. The second room contained
14 approximately 65 marijuana plants ranging in height from three to five feet. The marijuana plants were
15 in the flowering stage and were in orange colored plastic five gallon buckets containing a vermiculite
16 type growing medium. The marijuana plants were illuminated by eight high pressure sodium halide
17 lights that were inner connected by flexible tubing connected to an exhaust fan. The room also
18 contained a charcoal type cannister filter, an air conditioning unit, a CO2 generator, and a house hold
19 type fan.

20 12 The officers seized 8 high voltage light hoods; 8 ballasts; 1 CO2 generator; 1 two stage
21 water filter; and 1 charcoal canister filter from the barn because these items were being used to grow
22 marijuana plants.

23 13. The office area of Wyatt's residence contained a box with approximately 17 containers
24 of various colors and flavors of cotton candy mixed with marijuana. The office area also contained
25 packaging material which included empty containers marked Medi-Puff cotton candy, small plastic
26 vials, and empty plastic bags labeled cotton candy. The office also contained numerous documents that
27 appeared to be invoices from Wyatt to different people who purchased Medi-Puff cotton candy.

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1 14. A subsequent check of the internet led to the discovery of the website “www.medi-
2 puff.com” which listed marijuana cotton candy with twelve different flavors which were consistent with
3 the marijuana cotton candy seized in Wyatt’s barn. The web site had a price list containing the
4 following prices: a four pack for \$26.00; an eight pack for \$52.00; a sixteen pack for \$175.00; a 64 pack
5 for \$416.00; and a display stand for \$24.00. The website was consistent with the Medi-Puff items seized
6 from Wyatt’s residence.

7 15. Wyatt admitted making marijuana cotton candy by taking about ½ cup keif (concentrated
8 marijuana) and a cup of the cotton candy mixture.

9 16. Based on the NTF officers training and experience, the marijuana plants were being
10 grown for the purpose of sales and the marijuana from those plants was also being made into marijuana
11 cotton candy. The 8 high voltage light hoods; 8 ballasts; 1 CO2 generator; 1 two stage water filter; and
12 1 charcoal canister filter seized from the barn and the Whirlwind cotton candy machine were being used
13 to facilitate the cultivation and distribution of marijuana which was evidenced by their use in an active
14 marijuana grow.

15 17. Wyatt is charged with violating California Health and Safety Code Sections 11358 and
16 11359, Cultivation of Marijuana and Possession of Marijuana for Sale, in the Superior Court of the
17 State of California, County of San Diego.

18 18. On and/or prior to September 13, 2011, the defendant properties were used or intended
19 to be used to facilitate narcotics trafficking activities in violation of Title 21 of the United States Code,
20 Section 881.

21 19. Because of the aforementioned acts or uses alleged herein, either singly or in
22 combination, the defendant properties are subject to forfeiture pursuant to Title 21, United States Code,
23 Sections 881(a)(2) and 881(a)(9).

24 20. The defendant properties are presently stored within the jurisdiction of this Court.

25 21. The value of the Miscellaneous Components of Indoor Plant Cultivation is
26 approximately \$4,258.10.

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1 22. The value of the Whirlwind cotton candy machine is approximately \$3,500.00.

2 WHEREFORE, the United States prays that due process issue to enforce the forfeiture of the
3 defendant properties, and that due notice be given to all interested parties to appear and show cause why
4 said forfeiture should not be declared.

5
6 DATED: February 8, 2012

7 LAURA E. DUFFY
8 United States Attorney

9 s/Michael P. Running, Jr.

10 MICHAEL P. RUNNING, JR.
11 Special Assistant U.S. Attorney

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

SAUSA Michael P. Running, Jr., Phone: (619) 557-5979
USAO 880 Front Street, Room 6293, San Diego, CA 92101-8893

DEFENDANTS

Miscellaneous Components of Indoor Plant Cultivation Equipment, et al.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

'12CV0338 WQHBLM**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|---|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input checked="" type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

21 U.S.C. Section 881

Brief description of cause:
narcotics trafficking**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

02/08/2012

s/Michael P. Running, Jr.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____